1800. CUSHING, *Justice.* Although I am of opinion, that this Court has the same power, that a Court of the state of *Georgia* would possess, to declare the law void, I do not think that the occasion would warrant an exercise of the power. The right to confiscate and banish, in the case of an offending citizen, must belong to every government. It is not within the judicial power, as created and regulated by the constitution of *Georgia*: and it naturally, as well as tacitly, belongs to the legislature.

By the COURT: Let the judgment be affirmed with costs.

Williamson, Plaintiff in Error, *versus* Kincaid,

ERROR from the Circuit Court of *Georgia.* It appeared from the record, that "*Marian Kincaid* of *Great Britain*, widow, "*demanded* against *John G. Williamson* the one third of 300 "acres of land, &c. in *Chatham* county, as dower. That the "tenant *pleaded*, 1st. The act of *Georgia* (passed the 1st of *March* "1778) attainting *G. Kincaid* (the demandant's late husband) "forfeiting his estate, and vesting it in *Georgia*, without office. "2d. The act of the 4th of *May* 1782, banishing *G. Kincaid*, and "confiscating his estate. 3d. The appropriation and sale of the "lands in question by virtue of the said attainder and confisca- "tion, before the 3d of *September* 1783 (the date of the definitive "treaty of peace) and before *G. Kincaid's* death. 4th. The alien- "age of the demandant (who was resident abroad on the 4th of "*July* 1776 and ever since) and therefore incapable of holding "lands in *Georgia*. That the demandant *replied*, that she and "her husband were inhabitants of *Georgia*, on the 19th of *April* "1775, then under the dominion of *Great Britain*; that her "husband continued a subject of *Great Britain* and never owed "allegiance to *Georgia*, nor was ever convicted by any lawful "authority of any crimes against the state. That the tenant "*demurred* to the replication, the demandant joined in demur- "rer, and *judgment* was pronounced by the Circuit Court (com- "posed of WASHINGTON, *Justice*, and CLAY, *District Judge*) "for the demandant." On this judgment the writ of error was brought, and the following errors assigned.

1. The general errors.

2. The attainder of *G. Kincaid* and the forfeiture and sale of his estate; so no right to dower accrued; and no land out of which it could be enjoyed.

3. The alienage of the widow on the 4th of *July* 1776 and ever since, by which she was incapable to take and hold real estate in *Georgia*.

The principal question (whether an alien, *British* subject, was entitled, under the treaty of peace, to claim and hold lands in dower)

dower) was not discussed, as the judgment was reversed, for want of a sufficient description of the parties to the suit, on the authority of *Bingham* v. *Cabot*, 3 *Dall.* 382. and *Turner* v. *The Bank of North-America*. *Int.* But an important point of practice was previously settled, relative to the mode of ascertaining the value of the matter in dispute, in actions like the present. 1800.

For the plaintiff in error, it was admitted, in answer to an objection, that the value of the matter in dispute did not appear upon the record; but it was urged, that, from the nature of the subject, the demand of the plaintiff could not ascertain it; nor from the nature of the suit (like a case of ejectment, where damages are only given for the *ouster*) could it be fixed by the finding of a jury, on the judgment of the Court. 3 *Bl. Com.* 35, 6. As, therefore, there was no act of congress, nor any rule of the Court, prescribing a mode to ascertain, in such cases, the value in dispute, that the party may have the benefit of a writ of error, it was proposed to continue the cause, to afford an opportunity to satisfy the Court, by affidavits of the actual value of the property.

By the COURT: Be it so. Let the value of the matter in dispute be ascertained by affidavits, to be taken on ten days notice to the demandant, or her counsel in *Georgia*. But, consequently, the writ of error is not to be a *supersedeas*.

Ingersoll and *Dallas*, for the plaintiff in error.
E. Tilghman, for the defendant in error.

Blair *et al.* Plaintiffs in Error, *versus* Miller *et al.*

WRIT of error from the Circuit Court of *Virginia*. The judgment was rendered in the Circuit Court on the 28th of *May* 1799, and a writ of error issued returnable to *August* term 1799; but the record was not transmitted, nor the writ returned into the office of the clerk of the Supreme Court, till the 4th of *February* 1800. *Swift* objected to the acceptance and return of the record and writ: And,

By the COURT: The writ has become a nullity, because it was not returned at the proper term. It cannot, of course, be a legal instrument, to bring the record of the Circuit Court before us for revision. (1)

(1) See *post.* 22. *Course* v. *Stead et al.*

Rutherford